

Decision 04-03-042

March 16, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Utility Design, Inc. for Rehearing of
Resolution G-3359.

Application 03-12-028
(Filed December 17, 2003)

**ORDER DENYING APPLICATION
OF UTILITY DESIGN, INC. FOR
REHEARING OF RESOLUTION G-3359**

I. BACKGROUND AND DISCUSSION

On May 30, 1996, Florsheim Brothers (“Florsheim”), a developer of residential subdivisions, filed a complaint against Pacific Gas and Electric Company (“PG&E”), alleging that it had unlawfully refused to refund the costs they incurred to install facilities used for the delivery of natural gas in trenches also dug for electrical service. According to Florsheim, the refusal of PG&E to make such refunds was in direct violation of Gas Rule 15 requiring it to assume responsibility for all trenching involved in the installation of facilities used for the delivery of natural gas. In response, PG&E argued that no refund was required unless such installation increased the cost of trenching.

On September 17, 1998, the Commission issued Decision 98-09-058, ordering PG&E to refund to Florsheim the costs they incurred to install facilities used for the delivery of natural gas in joint trenches. The Commission concluded that, under Gas Rule 15, PG&E’s responsibility to make refunds is not limited to “‘gas-only’ trenches” nor to “‘situations where there is an identifiable gas trenching cost.” 82 CPUC 2d 153, 158 (footnote omitted). It went on to direct

PG&E to file an application the next time it believes Gas Rule 15 requires modification. Furthermore, the Commission encouraged PG&E to make refunds to all other similarly-situated applicants.

On October 26, 1998, PG&E filed Advice Letter 2111-G, proposing a plan under which it would make refunds to such other applicants. In response, Utility Design, Inc., (“UDI”) a designer of residential subdivisions, filed a protest, recommending among other things that PG&E should include interest in all such refunds. In reply, PG&E agreed that interest should be included.

On April 1, 2001, PG&E filed a petition for bankruptcy under Section 301 of Chapter 11 of the United States Bankruptcy Code. Of particular significance, Section 362 (a) of the Bankruptcy Code provides,

[A] petition filed under Section 301 . . . operates as a stay, applicable to all entities, of —

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect or enforce against property of the debtor any lien to the extent such lien secures a claim that arose before the

commencement of the case under this title;
[and]

- (6) any act to collect, assess, or recover a claim
against the debtor that arose before
commencement of the case under this title

In effect, therefore, any refund due under operation of PG&E's Gas Rule 15 falls within the jurisdiction of the Bankruptcy Court hearing PG&E's petition, and may only be paid pursuant to an order issued by the court.

On March 25, 2002, the Bankruptcy Court issued an order authorizing PG&E to make the refunds required by Gas Rule 15 according to certain, enumerated procedures. Specifically,

PG&E shall pay all reimbursements for line extension project facilities designed and/or installed by customers . . . plus interest on any amounts owed at the rate of ten percent (10%) per annum from and after April 6, 2001 (or, if later, the date such payment was due and owing) until the date of such payment, which payment shall be deemed to fully satisfy PG&E's obligations pursuant to Section 365(b)(i) [of the Bankruptcy Code] or otherwise with respect to such [reimbursement]

Order at 1-2; Resolution G-3359 at 11. In addition, along with each such payment, PG&E is ordered to serve notice indicating how any resulting dispute will be resolved: "If PG&E and [any] disputing party are unable to reach agreement with respect to the amount owed, PG&E shall file a motion with the Court to seek a judicial determination of the proper amount owed with respect to any such [reimbursement]." Order at 2; Resolution at 11. Alternatively, "Any disputing party may file its own motion herein if it does not wish to be included in any motion filed by PG&E; provided that all such disputes with respect to [reimbursements] subject to this Order shall be heard and determined by this Court." Order at 2-3; Resolution at 11.

On November 13, 2003, the Commission issued Resolution G-3359, approving Advice Letter 2111-G. It concluded that claims for reimbursement should follow the procedures established by the Bankruptcy Court. In particular, any dispute arising between PG&E and a claimant for refund should be resolved in the manner ordered by the court. As the Commission explained, “This approach will avoid confusion among the applicants and it will avoid conflicts with [the] Bankruptcy Court Order dated March 25, 2002.” Id. at 12.

On December 17, 2003, UDI filed an application for rehearing of Resolution G-3359. In its view, “The Commission was correct in deferring to the Bankruptcy Court for the handling and payment of [claims for refunds]; however, the Commission failed to recognize that the Bankruptcy Court’s jurisdiction did not begin until after April 6, 2001.” Application for Rehearing at 3-4. As a result, according to UDI, the Commission improperly denied thousands of applicants some two and a half years of interest in the calculation of their refunds. By relief, UDI requests that Resolution G-3359 be revised to require that interest be calculated from September 17, 1998, when the Commission issued Decision 98-09-058. On January 2, 2004, PG&E filed a response to UDI’s application for rehearing, arguing that it should be rejected on the basis that the Commission acted within its authority in accepting the Bankruptcy Court’s order of March 25, 2002.

PG&E is correct. Resolution G-3359 quite properly adopted the procedures established by the Bankruptcy Court. Under Section 362 of the Bankruptcy Code, any debt owed by PG&E may only be paid pursuant to an order issued by the court, including any refund due under Gas Rule 15. Furthermore, by the court’s order of March 25, 2002, interest to be included in any refund must be calculated at the earliest from April 1, 2001. Similarly, to avoid confusion and conflict, any dispute between PG&E and a claimant for a refund under Gas Rule 15 should be presented to and resolved by the Bankruptcy Court.

II. CONCLUSION

UDI has failed to show that the Commission committed legal error in approving PG&E's Advice Letter 2111-G.

THEREFORE, IT IS ORDERED that

1. UDI's application for rehearing of Resolution G-3359 is denied.
2. This proceeding is closed.

This order is effective today.

Dated March 16, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners